BAIL SLIP

The Appellant/Accused viz Raja was directaed to be released on bail in and by the order of this Court dated 28.09.2005 made in CRL MP NO. 7247/05 in CA NO. 1288/04 on the file of the High Court, Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2006

CORAM

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN
AND
THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

CRIMINAL APPEAL NO.1288 OF 2004

Raja .. Appellant/Accused

Vs.

State rep. by
The Inspector of Police,
K-3, Aminjikarai Police Station,
Chennai
Crime No.992/99 .. Respondent/Complainant

This criminal appeal is preferred under Section 374(2) Cr.P.C. against the judgment of the learned III Additional Sessions Judge, in-charge of the II Additional Sessions Judge, Chennai made in S.C.No.171 of 2000, dated 13.10.2004.

For Appellant : Dr.G.Krishnamurthy

For Respondent : Mr.P.Kumaresan, APP

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JUDGMENT

(The judgment of the Court was made by M.CHOCKALINGAM, J.)

This appeal has arisen from the judgment of the learned III Additional Sessions Judge, Chennai made in S.C.No.171 of 2000, whereby the sole appellant stood charged, tried and found guilty under Section 302 IPC and awarded with life imprisonment and to pay a fine of Rs.1000/-, in default to undergo 6 months RI.

2.The short facts necessary for the disposal of this appeal

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can be stated thus:

a)P.Ws.1 and 2 are the children of one Palayam @ Usha, since deceased in the incident. The accused/appellant was the paramour, living with her during the relevant time. Her husband was living at Vennangupattu village, Pondicherry. She was living with her children at Muthumariamman Koil Street, Aminjikarai. All along, she was quarrelling with the accused, since he refused to take her by way of regular marriage. On 12.09.1999, as usual, there was quarrel in that regard. Both children were also present. Following the same, in order to threat him, she poured kerosene on herself and the accused lit the match stick and set her fire. On hearing the distressing cry, P.W.4 and others came and they attempted to quench the fire.

b)The deceased was taken to the Kilpauk Medical College Hospital, where she was admitted by P.W.12, the Doctor at 10.25 p.m. She gave a statement, which was recorded by the Doctor and the same was marked as Ex.P.6. On admission, P.W.13, the Doctor gave treatment at 10.40 p.m. and she has also given statement to him. An intimation was given to the respondent police. P.W.10, the Head Constable, who was on duty at about 10.30 p.m., immediately proceeded to the hospital and recorded her statement, which was marked as Ex.P.4. On the strength of the same, a case came to be registered in Crime No.992 of 1999 under Section 309 r/w S.109 IPC. Ex.P.5, the FIR was despatched to the Court.

c)P.W.19, the Inspector of Police took up the investigation, proceeded to the hospital and recorded the statement of the deceased. On the strength of the said statement, he altered the case into one Section 307 IPC. Then, he proceeded to the scene of occurrence, made an inspection in the presence of the witnesses and prepared Ex.P.2, the observation mahazar and Ex.P.18, the rough sketch. An intimation was given to the learned VII Metropolitan Magistrate, who was examined as P.W.17, at about 3.45 p.m. on 13.9.1999. He went to the hospital and recorded the dying declaration at about 4.00 p.m. after being certified by the medical person that she was in a fit state of mind to give declaration. Ex.P.13 is the dying declaration proceedings.

d)Pending investigation, the accused was arrested on 13.9.1999 and he was sent for judicial remand. Despite treatment, the said Palayam @ Usha died. An intimation was given to the respondent police station. The case was altered to Section 302 IPC. The Investigating Officer has conducted inquest on the dead body of the deceased in the presence of witnesses and panchayatdars and prepared Ex.P.19, the inquest report. Following the same, the dead body of the deceased was sent for the purpose of autopsy.

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e)P.W.14, the Doctor attached to the Government Kilpauk Medical College Hospital, has conducted autopsy on the dead body of the deceased. He has issued Ex.P.7, the post-mortem certificate, wherein he has opined that the deceased would appear to have died due to the complications of burns. The Investigating Officer produced P.Ws.1 and 2 before the learned XII Metropolitan Magistrate, Chennai, who recorded their statements under Section 164 Cr.P.C. P.W.16 is the said Magistrate. The proceedings were also filed. All the material objects recovered from the place of occurrence and from the dead body of the deceased were subjected to chemical analysis by the Forensic Science Department. Ex.P.17 is the Chemical Analyst's report. On completion of the investigation, the Investigating Officer has filed the final report.

3.The case was committed to the Court of Sessions and necessary charges were framed. In order to substantiate the charges, the prosecution has examined 19 witnesses and relied on 19 exhibits and 6 M.Os. On completion of the evidence on the side of the prosecution, the accused was questioned under Section 313 Cr.P.C. as to the incriminating circumstances found in the evidence of prosecution witnesses, which he flatly denied as false. No defence witness was examined. The trial court, on hearing the arguments advanced on either side and scrutinising the materials available, took a view that the prosecution has proved the case beyond reasonable doubt and has found the appellant/accused guilty as per the charge and awarded with life imprisonment, which is the subject matter of challenge before this Court.

4.Advancing his arguments on behalf of the appellant, the learned counsel would submit that in the instant case, the prosecution relied on the evidence of P.Ws.1 and 2, who are the two children of the deceased and who were available at the time of occurrence; that the evidence of P.Ws.1 and 2 is not only a child witness, but it could not also be believed, in view of the dying declaration relied on by the prosecution; that even as per the prosecution, the deceased was taken to the hospital immediately and she was admitted by P.W.12, the Doctor at 10.25 p.m. She has given a statement to the Doctor that it was she, who herself poured kerosene and set fire on herself, which was marked as Ex.P.6 and thus, it was a case of commission of suicide and hence, a case came to be registered under Section 309 IPC; that subsequently, she gave a statement to the Head Constable at about 11.45 p.m., which was marked as Ex.P.4; and that this would go to show that this was an attempt to commit suicide and on the strength of which, a case came to be registered.

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5.Added further the learned counsel that at this juncture, it is to be further pointed out that the entire case of prosecution rested upon the dying declarations originally given to the Doctor, which was marked as Ex.P.6 and to the police agency, which was marked as Ex.P.4, which are contra to the prosecution case; that the lower court relied on the dying declaration alleged to have been given to the VII Metropolitan Magistrate, who was examined as P.W.17; that in the statement given by her to the Doctor and the statement to the Head Constable, on the basis of which a case came to be registered, she has stated that she poured kerosene and set fire herself. But, in the dying declaration, she has stated that she poured kerosene on her and the accused lit the match stick and set fire. Hence, in the face of different versions, it is doubtful whether she had spoken the truth. Under the circumstances, no material is available against the accused. Hence, the appellant is entitled for acquittal in the hands of this Court.

6.Heard the learned Additional Public Prosecutor on the above contentions.

7.It is not the fact in controversy that one Palayam @ Usha died in an incident that took place on 12.09.1999 at about 10.00 p.m. The deceased poured kerosene on her and set fire and following the incident, she was admitted in the hospital at about 10.25 p.m. by P.W.12, the Doctor. The first document, which came into existence, was Ex.P.6, wherein it has been clearly stated that she was conscious and it was herself, who poured kerosene and set fire herself. The second document, which came into existence, was the statement given by the deceased to the Head Constable of the respondent police station at about 11.45 p.m., which was marked as Ex.P.4. From Ex.P.4, it is found that she was conscious and she has given a statement that it was she, who made an attempt of commission of suicide by pouring kerosene and set ablaze. Both these documents have come into existence earlier. Apart from that, on the strength of Ex.P.4, the case came to be registered under Section 309 IPC. Thus, from the earlier part of the case, it could be seen that the deceased made an attempt to commit suicide.

8.Insofar as the other part of the case is concerned, the prosecution wanted to rest the case on the evidence of P.Ws.1 and 2, as eyewitnesses and also Ex.P.13, dying declaration alleged to have been given by the lady to the VII Metropolitan Magistrate on 13.9.1999 at about 4.00 p.m. stating that she poured kerosene on her and the accused lit the match stick and set fire. But, the statement given to P.W.12, the Doctor and also to the Head Constable, on the basis of which, a case came to be registered would reveal that she poured kerosene and set fire herself. Thus, there are different versions given by her. It can be stated that it should be an after thought or some one else could have tutored her and hence, this Court

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is of the considered opinion that it should not be given importance. In the last sentence of the dying declaration, it is stated that her children were away at that time. Hence, they were not competent to speak about the occurrence.

9.Considering all the circumstances and the statement given by her to P.W.12, the Doctor, at the earliest, which was marked as Ex.P.6 and also the statement given to the Head Constable, which was marked as Ex.P.4, the Court is of the considered opinion that it would be suffice to reject the prosecution case. Ex.P.13, the dying declaration alleged to have been given to the Magistrate, cannot be looked into for consideration for the reasons stated above. The lower court, without considering all the aspects, has erroneously found the appellant guilty and hence, the judgment of the lower court has got to be made undone only by upsetting the same.

10.Accordingly, the criminal appeal is allowed, setting aside the judgment of conviction and sentence imposed by the lower court on the accused. The appellant is acquitted of the charges levelled against him. The bail bonds, if any executed by the appellant, shall stand terminated. The fine amounts, if any paid by him, shall be ordered to be refunded to him.

vvk

Sd/

Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The V Metropolitan Magistrate, Egmore, Chennai.
2. -do- through The Chief Metropolitan Magistrate, Egmore, Chennai.
3.The III Additional Sessions Judge, (In-charge of II Addl. Sessions Judge), Chennai.
4.The Principal Sessions Judge, Chennai.
5.The Superintendent, Central Prison, Chennai.
6.The Public Prosecutor, High Court, Madras.
7.The Inspector of Police, K-3, Aminjikarai Police Station,Chennai.
8.The District Collector, Chennai.
9.The Director General of Police, Madras.
10. The Public Prosecutor, High Court, Madras - 104

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